IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 17TH NOVEMBER 2006 / 26TH KARTHIKA 1928

Crl.MC.No. 7624 of 2002(C)

CC.442/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, RANNI
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PETITIONER: ACCUSED 2 AND 3:
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1. R. NARAYANA SWAMY, QUALITY ASSURANCE MANAGER, HINDUSTAN COCA COLA BEVERAGES PRIVATE LTD., PLOT NO.18, BIDADI INDUSTRIAL AREA, BIDADI HOBLI, RAMNAGAR P.O., BANGALORE.

2. HINDUSTRAN COCA COLA BEVERAGES PRIVATE LIMITED, PLOT NO.18, BIDADI INDUSTRIAL AREA, BIDADI HOBLI, RAMNAGAR P.O., BANGALORE, REPRESENTED BY R. NARAYANA SWAMY, QUALITY ASSURANCE MANAGER.

BY ADV. SRI.N.A.MURALEEDHARAN

RESPONDENTS: COMPLAINANT & STATE:
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1. THE FOOD INSPECTOR, PATHANAMTHITTA CIRCLE, AZHOOR ROAD, PATHANAMTHITTA P.O.

2. THE STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. THAVAMONY, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.P. NO. 5926 OF 2002 IN CRL. M.C. NO. 7624

DISMISSED

20.11.2006 SD/- K.R. UDAYABHANU, JUDGE.

K.R. UDAYABHANU, J.

CRL.M.C.NO.7624 of 2002

DATED THIS THE 20TH DAY OF NOVEMBER 2006

ORDER

The petitioners who are the accused in C.C.No.442/2002 in the file of the Judicial First Class Magistrate, Ranni with respect to the offences under Sections 2(1-a)(1), 7(1) read with Section 16(1-A)(1) of the Prevention of Food Adulteration Act, have sought for setting aside the proceedings alleging that the petitioners have been deprived of the opportunity provided in the statute vide Section 13(2) to get the sample analysed by the Central Food Laboratory. It is the case of the petitioners that the manufacturing date of the sample, i.e.bottled water herein is 17-10-2001 and it is displayed in the packing as to use as best before six months from the date of packing. The above period expired on 15-4-2002. The complaint has been filed on 27-5-2002 as is evident from Annexure-A copy of the complaint. Annexure-C notice under Section 13(2) has been issued on 5-6-2002. Hence evidently the prosecution has been launched beyond the period specified on the bottle for use as best before which expired on 16-4-2002. Subsequent request to get the sample tested at the Central Food Laboratory would have served no purpose. Hence, the accused

was seriously prejudiced in their defence. Further more, the only violation with the standard i.e., as contained in Appendix-B. With respect to packed drinking water, P.H.value is noted as 6.02 whereas P.H.value as per the specification is 6.5 to 8.5. The rest of the ingredients noted in Annexure-B report of the Public Analyst comply with the above standard.

The dates of taking sample and filing of the complaint and date of manufacture and the period of user stands undisputed. In such circumstances, the accused would be put to serious prejudice and that the same is sufficient to quash the proceedings and the same has been approved and upheld as per the decision in **Nestle India Ltd. v. A.K.Chand, Food Inspector, Kalahandi, 1996(1)FAC 304.** There is no case for the prosecution that the remaining samples were preserved in such a manner so that the lifespan can be extended. Hence, the entire proceedings pending initiated vide C.C.No.442/2002 in the file of the Judicial First Class Magistrate Court, Ranni is herewith quashed. The Crl.M.C.is allowed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.M.C.NO.7624/2002
ORDER

20-11-2006